his defence was called. He has not lodged an appeal and the defence counsel in his letter to me confirmed that he did not wish to do so.

The real issue which is of importance in this case relates to the procedure adopted by the learned Magistrate in the course of determining the voluntariness of a cautioned statement of the accused in a trial within a trial. The statement was recorded by a Police Inspector, the officer who investigated the case, under section 113 of the Criminal Procedure Code. In determining the voluntariness of the cautioned statement the admissibility of which was challenged by the defence, the Magistrate called the accused first to give evidence and thereafter the prosecution witness concerned. Thereafter he made a finding that the cautioned statement was voluntarily made and admitted it as evidence.

No ground was given but in the circumstances it is safe to imply that the learned Magistrate was under the impression that the onus is on the defence to prove that the said statement was not made by the accused voluntarily. To my mind the learned Magistrate adopted the wrong principle. It is settled law that the question of voluntariness of such a statement lies upon the prosecution to establish. The trial is still in the prosecution stage. The duty is not for the accused to negative it. On the contrary, it is the duty of the prosecution to prove the statement is a voluntary one in the sense that it has not been obtained from the accused either by any threat or inducement or with hope of getting an advantage on a promise held out by a person in authority. Before putting the statement in, the prosecution has to satisfy itself thereon and adduce evidence in support thereof. The accused is entitled to cross-examination and thereafter to give evidence in support of his objection. Similarly the prosecution is also entitled to cross-examine the accused and his witnesses, if any. At the close of the case, the court has to make a decision whether the statement was made voluntarily or otherwise.

I trust the procedure stated above should be followed in future cases where a similar situation arises. Since the wrong procedure adopted by the learned Magistrate has not affected the decision in any way, there being other evidence to uphold the conviction and in the absence of any appeal both the conviction and sentence are not disturbed and are hereby confirmed.

Order accordingly.

PUBLIC PROSECUTOR v. MOHTAR BIN ABDUL LATIFF

[R.Cr.J. (Harun J.) February 20, 1980]

[Kuala Lumpur — Federal Territory Criminal Revision No. 5 of 1980]

Criminal Law and Procedure — Trial — Date of trial — To be fixed at convenience of court — Duties of counsel — Legal Profession (Practice and Etiquette) Rules, 1978, rr. 2 6 & 24 — Legal Profession Act, 1976, s. 77(3).

Legal Profession — Duties of counsel — Legal Profession (Practice and Etiquette) Rules, 1978, rr. 2, 6 & 24 — Legal Profession Act, 1976, s. 77(3).

In this case the accused was alleged to have committed criminal breach of trust. He originally pleaded guilty but was subsequently allowed to withdraw his plea. The hearing was fixed for October 4, 1979 in the presence of counsel. Subsequently counsel applied successfully for the postponement of the trial to February 4, 1980 and then to September 9, 1980, as he claimed to be engaged in other courts. The records were called on revision.

Held: (1) the general rule is that trial dates are fixed at the convenience of the court on a first come-first served basis;

(2) in this case counsel had no good or cogent reasons to apply for postponement and when the dates for trial were fixed he should not have accepted briefs which clashed with the trial date of the case;

(3) the case should be fixed for trial on an early date.

[Editorial Note: See Registrar's Circular No. (U) 3 of 1980.]

CRIMINAL REVISION.

J.L. O'Hara (Deputy Public Prosecutor) for the Public Prosecutor.

Manjeet Singh for the respondent.

Harun J.: In this case, the accused is alleged to have committed criminal breach of trust of an assortment of household appliances worth more than $20,000 from the Police Co-operative in 1976. The complaint was made in May 1977 and the accused was charged in court in July 1978. He claimed trial and hearing was fixed for January 23, 1979. When the case came up for trial on that day the accused pleaded guilty to the charge but the prosecuting officer said he did not have the facts of case with him and so the hearing was adjourned to February 2, 1979 for facts and sentence.

When the case came up again, the accused had the assistance of counsel but the prosecuting officer said he needed a longer date as there were many documents and receipts to be traced. In short, the investigation had not been completed.

Further hearing was fixed for April 7, 1979 but on that day counsel was not present when the case was called. The accused still maintained his plea of guilty. The hearing was adjourned to April 9, 1979 when the accused retracted his plea of guilty, whereupon the hearing was adjourned to October 4, 1979 in the presence of counsel. On September 22, 1979 counsel wrote to the court stating that he would not be able to attend court on October 4, 1979 as he will be engaged in the Industrial Court. He gave his free dates. The court, in order to accommodate counsel, postponed the case to February 4, 1980, being one of counsel's free dates. On February 2, 1980, counsel wrote in again stating that he would not be free on February 4, 1980 as he will be engaged in the Kelang Magistrate's Court on that day. He asked for another date, this time his earliest available date being September 1980. The court obliged and set hearing for September 9 & 10, 1980.

I called for the records of this case, as it appeared to me that it was an unduly long postponement when that particular court had hearing dates available in February and March this year. In fact that court was specially established this year to dispose of this type of cases expeditiously.

In any criminal trial, there are three parties, the court, the prosecution and the defence. If dates of

hearing are to be fixed at the convenience of all three parties, then trial dates will be fixed at some considerable time hence. There is of course no guarantee, as happened in this case, that the trial will go on as scheduled on the date fixed, if everyone's convenience is taken into account. The general rule, therefore, has always been that trial dates are fixed *at the convenience of the court,* on a first-come-first-served basis. This is fair to all concerned. Public funds are not wasted on idle courts when there is so much work to do.

This case clearly shows that the court had gone out of its way to accommodate the convenience of counsel and yet on at least two occasions counsel disappointed the court and inconvenienced everybody else by being engaged elsewhere. It will not be out of place here to remind all concerned of the Legal Profession (Practice & Etiquette) Rules, 1978 made under section 77 of the Legal Profession Act, 1976 which provides:

Rule 2:

"No advocate and solicitor is obliged to act as adviser or advocate for every person who may wish to become his client but the advocate and solicitor may accept any brief in the Courts in which he professes to practise at a proper professional fee dependent on the length and difficulty of the case:

Provided that special circumstances may justify his refusal, at his discretion, to accept a particular brief."

Rule 6(a):

"An advocate and solicitor shall not accept any brief unless he is reasonably certain of being able to appear and represent the client on the required day."

Rule 24:

"(a) An advocate and solicitor shall make every effort to be ready for trial on the day fixed.

(b) An advocate and solicitor may apply for postponement of a case fixed for hearing for good and cogent reasons only."

Section 77(3) of the Legal Profession Act reads:

"Any advocate and solicitor who fails to comply with any rules made under this section may be liable to disciplinary proceedings."

It is obvious in this case that counsel had no good or cogent reasons to apply for postponement of the hearing. The hearing dates had been fixed well in advance to suit his convenience. He should not have accepted this brief or the other briefs which clashed with the trial dates of this case.

The allegations in the case occurred more than four years ago. The case has been in court for more than 18 months, which is too long a waiting period for a criminal case. In accordance with section 35 of the Courts of Judicature Act, 1964, I direct that this case be remitted to the Magistrate's Court to-day for early trial on dates convenient to the court.

Order accordingly.

Solicitors: *Manjeet Singh, Dhillon & Co.*